

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Spectrotel, Inc. d/b/a/ Touchbase Communications)	Complaint Nos. 613496
)	777224
Complaints Regarding)	1182010
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: April 26, 2019

Released: April 26, 2019

By the Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider three complaints¹ alleging that Spectrotel, Inc. d/b/a Touchbase Communications (Touchbase) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We find that Touchbase's actions violated the Commission's carrier change rules, and we therefore grant Complainants' complaints.

2. Section 258 of the Communications Act of 1934 (the Act), as amended, prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.³ The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁴ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the subscriber's order.⁵ The Commission also has adopted rules to limit the liability of subscribers when a carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.⁶

¹ See Informal Complaint No. 613496, filed Oct. 26, 2015; Informal Complaint No. 777224, filed Jan. 27, 2016; Informal Complaint No. 1182010, filed Sept. 8, 2016.

² See 47 CFR §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a).

⁴ See 47 CFR § 64.1120.

⁵ See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

⁶ These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying (continued....)

3. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization. Pursuant to Sections 1.719 and 64.1150 of our rules, we notified Touchbase of the complaints.⁷ Touchbase responded to the complaints, stating that it obtained authorization from Complainants through third-party verification (TPV).⁸

4. We have reviewed each TPV, and find that Touchbase's third-party automated verification system did not comply with the Commission's verification procedures.⁹ Under the rules, a carrier's third-party verifier must elicit "the telephone numbers to be switched."¹⁰ In each of Touchbase's TPVs, the verifier identifies one telephone number but fails either to elicit from the consumer or to list all of the telephone numbers that Touchbase ultimately switched. Instead, the verifiers simply state they are confirming a switch for the "telephone numbers associated with this order." Confirming numbers "associated with this order" does not elicit each telephone number the consumer authorizes to be switched.¹¹ We therefore find that Touchbase's actions were in violation of our carrier change rules, and we discuss Touchbase's liability below.¹²

5. Touchbase must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized changes in accordance with the Commission's liability rules.¹³ We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and that neither the Complainants' authorized carriers nor Touchbase may pursue any collection against Complainants for those charges.¹⁴ Any charges imposed by Touchbase on the subscribers for service provided after this 30-day period shall be paid by the subscribers at the rates the subscribers were paying to their authorized carriers at the time of the unauthorized changes.¹⁵

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to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. *See id.* §§ 64.1140, 64.1170.

⁷ *Id.* § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

⁸ *See* Touchbase Response to Informal Complaint No. 613496, filed Dec. 8, 2015; Touchbase Response to Informal Complaint No. 777224, filed Feb. 5, 2016; Touchbase Response to Informal Complaint No. 1182010, filed Sept. 21, 2016.

⁹ *See* 47 CFR § 64.1120(c)(3)(iii).

¹⁰ *Id.*

¹¹ *See, e.g., Birch Telecom, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 18111, 18113 (CGB 2008) (granting consumer complaint because the verifier failed to confirm with the consumer all the telephone numbers to be switched); *Birch Communications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 10147, 10149, para. 4 (CGB 2010) (granting complaint because the verifier failed to confirm with the consumer each of the telephone numbers to be switched).

¹² If any Complainant is unsatisfied with the resolution of the complaint, the Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

¹³ *See id.* § 64.1160(b).

¹⁴ *See id.* § 64.1160(d).

¹⁵ *See id.* §§ 64.1140, 64.1160.

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaints filed against Spectrotel, Inc. d/b/a/ Touchbase Communications ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), the Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and that Spectrotel, Inc. d/b/a Touchbase Communications may not pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

Sincerely,



Nancy Stevenson
Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau